

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

**A La Carte Pricing and Programming for
Cable Television**

MB Docket No. 04-207

**REPLY COMMENTS OF

NATIONAL ASSOCIATION OF TELECOMMUNICATIONS

OFFICERS AND ADVISORS**

The National Association of Telecommunications Officers and Advisors (NATOA) hereby submits Reply Comments in the Commission's docket on A La Carte Pricing.

NATOA is a national association that represents over 1,000 local government agencies, local government staff and public officials, as well as consultants, attorneys, and engineers who consult local governments on their telecommunications needs. Pursuant to the Communications Act of 1934, as amended, our government members are the regulators of cable operators with regard to rates for the basic service tier (BST) and for equipment and installation charges.¹ Our members thus stand on equal footing with the Commission as congressionally-recognized co-regulators of cable operators.² The information submitted in NATOA's initial comments in this proceeding expressed the concerns and preferences of our local regulators and their subscriber constituents regarding cable television products and services. Our members told us that consumers want more flexibility in the ability to choose content and price from video providers. We trust that these consumer and co-regulator concerns will be weighed heavily by the

¹ See 47 U.S.C. §§ 543 and 544.

² NATOA's members' other responsibilities range from cable administration, telecommunications franchising, rights-of-way management, and governmental access programming to information technologies and I-NET planning and management.

Commission in developing the Commission's policies and recommendations on the a la carte issue.

After reviewing the initial comments, NATOA notes with concern the lack of a full and complete record on a number of important factors. First, comments filed on behalf of some cable operators, programmers, and their respective associations did not fulfill the need of the Commission to be able to develop a factual record on the issue of tying of programming contracts to non-negotiable tier placements (with respect to both retransmission consent agreements and affiliation agreements). Nor did these comments address the use of a la carte offerings in the mid-90s (seemingly in an attempt to evade cable rate regulation) by cable operators who now claim that a la carte offerings are not technically or economically feasible.

Specifically, most Comments filed in this proceeding did not address the issue raised by the Commission in the Notice – that is, the lack of specific information on the financial impact of program contracts, retransmission consent agreements and affiliation agreements. NATOA suggests that requirements within these agreements for preferential placement of certain expensive or new services on the basic or expanded basic (analog or digital) tiers of service generate the highest license fee and advertising revenue for the programmer, as well as higher monthly revenues for the cable operator. In NATOA members' view, such tying arrangements have led to subscribers being forced to purchase these new services and enlarged tiers on an expensive "all or nothing" basis. In a sense, this is a form of "negative option" which both the Commission and Congress have specifically prohibited. NATOA believes the Commission should require cable operators and programmers to provide it with details on any and all such arrangements involving program contracts, retransmission consent agreements, and affiliation agreements. NATOA notes with appreciation the offer by the American Cable Association to provide this information to the Commission and strongly encourages the Commission to take advantage of this opportunity to enhance the record in this proceeding. We suggest that entities that refuse to provide pertinent information as requested cannot later suggest that the record is incorrect or incomplete.

Some cable operators seem to suggest that analog a la carte offerings are technically impractical or too costly to implement at the present time. Yet more than ten years ago, several cable operators, Adelphia in particular, considered implementing or attempted to implement a la carte analog offerings. At that time, the Commission determined that such attempts constituted an evasion of rate regulation and negated implementation of a la carte offerings; however, few (if any) comments in the present proceeding explain why a technically possible and practical solution available in 1993 is now impractical or technically impossible.

NATOA, like the Board of Public Utilities in New Jersey, questions how cable operators offered a la carte services in the past when it was beneficial to them (as a means of avoiding rate regulation), and now claim impracticality or impossibility when such offerings would benefit the consumer. NATOA requests that the Commission require cable operators to fully explain this dichotomy in order to complete the record in this proceeding. NATOA suggests that cable operators technically *can* offer a la carte programming or a larger number of smaller tiers that would be more consumer-friendly. However we also believe it possible that due to the problematic tying agreements discussed above and/or the potential loss of revenue from captive analog ratepayers, the industry does not want to admit that its opposition to a la carte offerings is primarily based on financial concerns.

NATOA is hopeful that the Commission will require operators and programmers to fully respond to the Commission's Notice and subsequent requests for information with meaningful supplemental information (public and proprietary) to complete the record in this critical proceeding. We are mindful of the short timeframe the Commission has in this proceeding and are appreciative of the need to timely report to Congress as requested.

Respectfully submitted,

A handwritten signature in dark ink that reads "Libby Beaty". The signature is written in a cursive, slightly slanted style.

Libby Beaty
Executive Director
National Association of
Telecommunications Officers and
Advisors